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IN THE

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1947

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No. 292 JOHN HENRY BRUNSON, Petitioner,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 293 ESSIE KING, Petitioner,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 294 MARTHA JONES, Petitioner,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 295 LOUISE JAMES (Alias MOORE), and EVELYN CHILDS, Petitioners,

v.

STATE OF NORTH CAROLINA, Respondent.

No. 296 LIDA MAE WATKINS, CELIA ANN PURCELL, JAMES EDWARD STURDIVANT, and LOUVENIA WALLACE, Petitioners,

v.

STATE OF NORTH CAROLINA, Respondent.

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# BRIEF OF THE STATE OF NORTH CAROLINA, RESPONDENT, OPPOSING PETITIONS FOR WRITS OF CERTIORARI

## STATEMENT OF THE CASE

The petitioners, John Henry Brunson, Essie King, Martha Jones, Louise James (Alias Moore), Evelyn Childs, Lida Mae Watkins, Celia Ann Purcell, James Edward Sturdivant, and Louvenia Wallace, seek by writs of *certiorari* to have the United States Supreme Court to review the decisions of the Supreme Court of North Carolina affirming judgments imposing sentences upon the petitioners for convictions of various misdemeanors described in the facts below. The opinions of the Supreme Court of North Carolina, in these cases, were filed on June 5th, 1947. The opinions of the Supreme Court of North Carolina, in these cases, referred to and adopted the rulings in the case of STATE v. KORITZ, ET ALS, (227 N. C. 552), as decisive and controlling in these cases.

## FACTS

All of the petitioners were convicted in the Municipal Court of the City of Winston-Salem of various misdemeanors growing out of a labor dispute. The petitioners all appealed to the Superior Court of Forsyth County, where they were again convicted; and upon their appeals to the Supreme Court of North Carolina, judgments of the Superior Court of Forsyth County were affirmed. Petitioner, Brunson, was convicted of assaulting, beating and wounding a woman, Christine Davis, the petitioner being a man over eighteen years of age.

Petitioner, Essie King, was convicted of disorderly conduct in that she engaged in fighting, cursing and disorderly conduct calculating to invoke a breach of the peace.

Petitioner, Martha Jones, was convicted on a charge of disorderly conduct in that she engaged in loud and boisterous cursing, using obscene language and engaging in

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other conduct calculating to invoke a breach of the peace.

Petitioner, Louise James (Alias Moore), was convicted on a charge of wanton and malicious injury to the property of Annie Blanton by throwing a rock through a window.

Petitioner, Lida Mae Watkins, was convicted on four charges:

(a) Assaulting, beating and wounding Ethel Crews with a deadly weapon, a stick.

(b) Assaulting, beating and wounding G. W. Lancaster with a deadly weapon, a stick.

(c) Hindering, delaying and resisting police officers in the discharge of their official duties.

(d) Assaulting, beating and wounding R. F. Holcomb with a deadly weapon, a stick.

Petitioner, Celia Ann Purcell, was convicted of assaulting, beating and wounding Estelle Britt with a deadly weapon, a stick.

Petitioner, James Edward Sturdivant, was convicted of assaulting, beating and wounding Estelle Britt, he being a man over eighteen years of age.

Petitioner, Louvenia Wallace, was convicted of assaulting, beating and wounding Estelle Britt.

The petitioners received various sentences as shown by the records. All of the petitioners filed motions to quash the warrants and discharge the trial jury and grand jury as shown in the records. These motions were based upon race discrimination in the drawing and selecting of the juries, the petitioners being colored people. The trial judge made findings of fact in each case to the effect that there had been no race discrimination in the drawing and selecting of the juries that convicted petitioners.

## ARGUMENT

### I

THE METHOD EMPLOYED BY THE COMMISSIONERS OF FORSYTH COUNTY IN THE SELECTION OF THE PETIT JURY IN THE PRESENT CASES PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

The Trial Court and the Supreme Court of North Carolina found that there was no arbitrary, intentional, or systematic discrimination against persons of the colored race in the selection of the trial jury in these cases. These findings are supported by the evidence in the records.

FAY v. NEW YORK, 91 L. ed. 1517, Decided June 23, 1947;

AKINS v. TEXAS, 325 U. S. 398; 89 L. ed. 1692;

THOMAS v. TEXAS, 212 U. S. 278; 53 L. ed. 512;

STATE v. WALLS, 211 N. C. 487; 191 S. E. 232, Appeal dismissed WALLS v. NORTH CAROLINA, 302 U. S. 635, 82 L. ed. 494.

In AKINS v. TEXAS, *supra*, Mr. Justice Reed said:

> "As will presently appear, the transcript of the evidence presents certain inconsistencies and conflicts of testimony in regard to limiting the number of Negroes on the grand jury. Therefore, the trier of fact who heard the witnesses in full and observed their demeanor on the stand has a better opportunity than a reviewing court to reach a correct conclusion as to the existence of that type of discrimination. While our duty, in reviewing a conviction upon a complaint that the procedure through which it was obtained violates due process and equal protection under the Fourteenth Amendment, calls for our examination of evidence to determine for ourselves whether a Federal constitu-

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tional right has been denied, expressly or in substance and effect, Norris v. Alabama, 294 U. S. 587, 589, 590, 79 L. ed. 1074, 1076, 1077, 55 S. Ct. 579; Smith v. Texas, 311 U. S. 123, 130, 85 L. ed. 84, 86, 61 S. Ct. 164, we accord in that examination great respect to the conclusions of the state judiciary, Pierre v. Louisiana, 306 U. S. 354, 358, 83 L. ed. 757, 760, 59 S. Ct. 536. That respect leads us to accept the conclusion of the trier on disputed issues 'unless it is so lacking in support in the evidence that to give it effect would work that fundamental unfairness which is at war with due process'."

In THOMAS v. TEXAS, *supra*, Mr. Chief Justice Fuller observed:

"As before remarked, whether such discrimination was practised in this case was a question of fact, and the determination of that question adversely to plaintiff in error by the trial court and by the court of criminal appeals was decisive, so far as this court is concerned, unless it could be held that these decisions constitute such abuse as amounted to an infraction of the Federal Constitution which cannot be presumed, and which there is no reason to hold on the record before us. On the contrary, the careful opinion of the court of criminal appeals, setting forth the evidence, justifies the conclusion of that court that the Negro race was not intentionally or otherwise discriminated against in the selection of the grand and petit jurors. Indeed, there was a Negro juror on the grand jury which indicted plaintiff in error, and there were Negroes on the venire from which the jury which tried the case was drawn, although it happened that none of them were drawn out of the jury box."

The facts in the case of STATE v. WALLS, *supra*, are identical with the facts in the instant case except for the difference in the mathematical ratios. Proportional representation is not required.

AKINS v. TEXAS, 325 U. S. 398; 89 L. ed. 1692;
THOMAS v. TEXAS, 212 U. S. 278; 53 L. ed. 512;
VIRGINIA v. RIVES, 100 U. S. 313; 25 L. ed. 667.

The Records in these cases show that the jury was drawn from the regular box by a child under ten years of age. (R. pp. 15, 32). The BRUNSON Record further shows (R. p. 36) that the name of one Negro juror was drawn out of the regular jury box, was summoned by the sheriff for service on the petit jury at the time these cases were tried and that he served. In the case of State v. WALLS, *supra*, the names of the white jurors were written in black ink; and those of the colored race were written in red ink. This method is used for convenience of officers who serve the jurors with process, since if they know the race of the juror, it is easier to locate the juror. Likewise, in the WALLS case, there were the names of 10,000 white persons in the jury box and 650 names of the colored race.

The appeal in the WALLS case was treated as a *certiorari* by this Court, and *certiorari* was denied. See WALLS v. STATE OF NORTH CAROLINA, 302 U. S. 635, 82 L. ed. 494.

## II

## THE NORTH CAROLINA STATUTES REGULATING THE SELECTION AND QUALIFICATION OF JURORS ARE CONSTITUTIONAL AND THE QUESTION OF THEIR VALIDITY DOES NOT PER SE PRESENT ANY SUBSTANTIAL FEDERAL QUESTION.

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The North Carolina Statutes relating to the selection and qualification of jurors make no mention of race as a qualification for jury service. Any person who meets the qualifications prescribed, regardless of race, is authorized to serve on a jury in North Carolina. Since the Statutes do not *per se* discriminate against any person because of race, any Federal question presented is not substantial because it has already been decided adversely to the contentions of the petitioners.

FAY v. NEW YORK, 91 L. ed. 1517, Decided June 23, 1947;

FRANKLIN v. SOUTH CAROLINA, 218 U. S. 162, 54 L. ed. 980;

BUSH v. KENTUCKY, 107 U. S. 110, 27 L. ed. 354;

NEAL v. DELAWARE, 103 U. S. 370, 26 L. ed. 567;

STRAUDER v. WEST VIRGINIA, 100 U. S. 303, 25 L. ed. 664.

## III

## WHETHER AN EXCEPTION OR ASSIGNMENT OF ERROR IS PROPERLY PRESENTED TO A STATE COURT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

Whether or not a question is presented to a State court for decision should be determined by applying State laws and rules of court.

TARRANCE v. FLORIDA, 188 U. S. 519, 47 L. ed. 572.

Headnote number two of TARRANCE v. FLORIDA, *supra*, epitomizing the holding, reads as follows:

> "The settled rule of a state court that objections to the manner of selecting grand jurors on behalf of one who has been indicted by such jurors must be taken by

plea in abatement, and not by motion to quash the venire and panel, is binding on the Supreme Court of the United States on writ of error to the state court."

## IV

## THE PETITION FOR CERTIORARI PRESENTS NO FEDERAL QUESTION BECAUSE THE QUESTIONS ATTEMPTED TO BE RAISED BY THE PETITIONERS WERE NOT EXPRESSLY OR NECESSARILY DECIDED BY THE SUPREME COURT OF NORTH CAROLINA.

In the instant case the Supreme Court of North Carolina held only that the petitioners had not presented to it for decision any question of discrimination against members of the colored race in the selection of petit juries.

Since the highest court of the State did not expressly or necessarily decide any Federal question attempted to be presented by the petitioners, this court has no jurisdiction to review the decision of the North Carolina Supreme Court.

BROOKS v. MISSOURI, 124 U. S. 394;
WHITNEY v. CALIFORNIA, 274 U. S. 357;
LYNCH v. NEW YORK, 293 U. S. 52;
SOUTHWESTERN BELL TELEPHONE COMPANY v. OKLAHOMA, 303 U. S. 206.

In WHITNEY v. CALIFORNIA, 274 U. S. 357, 360, it is said:

> "It has long been settled that this court acquires no jurisdiction to review the judgment of a state court of last resort on a writ of error, unless it affirmatively appears on the face of the record that a Federal question constituting an appropriate ground for such review was presented in and expressly or necessarily decided by such state court."

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## CONCLUSION

Even if some of the questions set out in the petitions are Federal ones, they are not substantial and have been resolved adversely to the contentions of the petitioners and are not of sufficient importance to warrant consideration by the United States Supreme Court. The writs should be denied since, under the rules and decisions of this Court, review on writs of *certiorari* is a matter not of right but of discretion.

UTLEY v. ST. PETERSBURG, 292 U. S. 106;
LEONARD v. VICKSBURG S. & P. R. CO., 198 U. S. 416.

Respectfully submitted,

HARRY McMULLAN,
Attorney General

RALPH MOODY,
JAMES E. TUCKER,
*Assistant Attorneys General,*
*Counsel for the State of*
*North Carolina, Respondent.*